We would accordingly dismiss this appeal with costs here and below. Deposit to respondent to account of taxed costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; A.J. Ariffin, Chong & Harpal.*

MALAYAN UNITED FINANCE BHD. v. NOORMURNI SDN. BHD. & ANOR.

[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) February 26, 1986 & October 31, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 280 of 1985]

Civil Procedure – Issue estoppel – Res judicata.

The appellants in this case had by various hire purchase agreements hired out to the first respondent, a limited company, various motor vehicles as set out in their statement of claim. The second respondent was the guarantor. The appellants had previously brought an action against the first respondent alone relating to the same subject, save that the first suit was in respect of eight out of the nine vehicles. The appellants in that suit applied for summary judgment under Order 14 of the Rules of the High Court but were unsuccessful and the respondents were given unconditional leave to defend.

The appellants did not appeal against the decision of the Senior Assistant Registrar in that case but discontinued their action with liberty to file afresh. The appellants then filed the present suit and again sought to obtain summary judgment under Order 14. The Senior Assistant Registrar allowed the appellants to enter final judgment but, on appeal, the learned judge held that the doctrine of "issue estoppel" applied and he allowed the appeal of the respondents. The appellants appealed to the Supreme Court.

Held, dismissing the appeal: (1) issue estoppel can arise even where a plea of *res judicata* cannot be established because the causes of action are not the same;

(2) the doctrine of *res judicata* is not a technical doctrine applicable only to records but it is a fundamental doctrine of all courts that there must be an end to litigation.

Case referred to:

1) *Carl-Zeiss-Stiftung* v. *Rainer And Keeler Ltd. & Ors. (No.2)* [1966] 2 All E.R. 536, 565.

SUPREME COURT.

N. Chandran (*T. J. Su* with him) for the appellants.

U. Harcharan Singh for the respondents.

Cur. Adv. Vult.

Wan Suleiman S.C.J. (delivering the judgment of the court): The appellants had by various hire purchase agreements hired out to the first respondent various motor vehicles, as set out in their statement of claim, the first respondent being a limited company and the second respondent the guarantor of the first respondent.

The appellants have previously filed a suit, K.L. High Court Civil Suit No. C1129 of 1981 (the first suit) against the first respondent alone relating to the same subject save that the first suit was in respect of eight out of the nine vehicles.

In the first action, the appellants unsuccessfully attempted to obtain summary judgment under Order 14, and the respondents were given unconditional leave to defend. The appellants discontinued their action and were granted liberty to file afresh.

There was no appeal from this decision which was made by the Senior Assistant Registrar. The appellants then filed the present suit, *i.e.* Civil Suit No. C83 of 1984 (the second suit), and again sought to obtain summary judgment under Order 14.

Counsel for the respondents submitted in the court below that since the issues between the parties had been finally decided on the merits in the hearing before the Senior Assistant Registrar in the first suit where the appellants' application for summary judgment had been dismissed, and where no appeal had been lodged, that decision was to be regarded as a final one, and the doctrine of "issue estoppel" would apply against them.

The learned judge in the court below agreed with counsel for the respondents and allowed their appeal against the decision of the Senior Assistant Registrar of February 6, 1985, wherein the latter had allowed the appellants to enter final judgment under Order 14 in the second civil suit.

We agree with the learned judge that "issue estoppel" can arise even where a plea of *res judicata* cannot be established because the causes of action are not the same.

Halsbury's Laws of England – 4th Ed. Vol. 16 paragraph 1530 succinctly sets out the law, which is cited hereunder:

"A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. This principle applies whether the point involved in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law. The conditions for the application of the doctrine have been stated as being that (1) the same question was decided in both proceedings; (2) the judicial decision said to create the estoppel was final; and (3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies. Where one party has raised an issue which his opponent alleges is barred by issue estoppel the opponent can either plead the estoppel and leave the matter to be dealt with at the trial, or he can attempt to have the offending plea struck out."

It adopts the very words of Lord Guest's speech in *Carl-Zaiss – Stifung* v. *Rainer And Keeler Ltd. & Others (No. 2)*,[1] referred to by the learned judge in his judgment.

We need only deal with the only other point taken up on behalf of the appellants by Mr. Chandran. It is clear to us that learned counsel has misread the judgment because his contention here is that the learned judge had erred in law in holding that even if the first defendant was given unconditional leave to defend (in K.L. High Court C.S. No. C1129 of 1981), the granting of such unconditional leave to defend to the first respondent/first defendant operates to estop the appellant from proceeding with an application for summary judgment in the second action *i.e.* C.S. No. C236 of 1981. What the learned judge did say in his judgment was, and we quote. "No doubt the giving of leave to defend cannot be said to be a final judgment but in respect of issue estoppel the question is not whether there is a judgment that is final but whether the issue that was adjudicated on was disposed of with finality"

We would respectfully agree with the learned judge's statement of the law aforementioned, having regard to the passage in *Halsbury's* we had considered earlier and to the authorities cited therein.

As is stated at paragraph 1527 of the same volume of *Halsbury's*, the doctrine of *res judicata* is not a technical doctrine applicable only to records, but is a fundamental doctrine of all courts that there must be an end of litigation. *Interest reipublicae ut sit finis litium.*

According, this appeal is dismissed with costs here and below. Deposit to respondents to account of taxed costs.

Appeal dismissed.

Solicitors: *Adnan Sundra & Low; Azman, Davidson & Co.*

LEONG SIEW HOONG v. PUBLIC PROSECUTOR

[O.C.J. (K.C. Vohrah J.) November 17, 1987]

[Kuala Lumpur – Federal Territory Criminal Application No. CR 54-31-87]

Criminal Procedure – Bail – Application for – Charge of trafficking in dangerous drugs – Punishment of death – Gross weight of drugs given – Whether weight of drugs relevant to application – Principles applicable – Dangerous Drugs Act 1950, ss. 37(da), 39B & 41B.

The accused was charged with the offence of trafficking in dangerous drugs, an offence under section 39(B) of the Dangerous Drugs Act 1950 and punishable with death. The weight of the drugs stated in the charge was the gross weight.

The accused applied for bail pending the disposal of his case. Counsel for the accused relied on *Ho Chuan Chong* v. *Public Prosecutor*[1] and argued that bail should be granted. The main argument of counsel was that the nett weight of the drugs may well be below the requirements of the charge and therefore the accused was not caught under the restriction relating to bail in section 41B of the Dangerous Drugs Act 1950.

Held, dismissing the application: (1) this case did not essentially turn on the weight of the heroin specified in the